Whereas bays once filled with fish and oysters have become dead zones filled with excess nutrients, chemical wastes, harmful algae, and marine debris;

Whereas sea level rise is accelerating the degradation of estuaries by—

(1) submerging low-lying land;

(2) eroding beaches;

(3) converting wetland to open water;

(4) exacerbating coastal flooding; and

(5) increasing the salinity of estuaries and freshwater aquifers;

Whereas the Coastal Zone Management Act of 1972 (16 U.S.C. 1451 et seq.) declares that it is the national policy to preserve, protect, develop, and if possible, to restore or enhance, the resources of the coastal zone of the United States, including estuaries, for current and future generations;

Whereas scientific study leads to better understanding of the benefits of estuaries to human and ecological communities;

Whereas Federal, State, local, and tribal governments, national and community organizations, and individuals work together to effectively manage the estuaries of the United States;

Whereas estuary restoration efforts restore natural infrastructure in local communities in a cost effective manner, helping to create jobs and reestablish the natural functions of estuaries that yield countless benefits; and

Whereas September 25, 2010, has been designated as ''National Estuaries Day'' to increase awareness among all people of the United States, including Federal, State and local government officials, about the importance of healthy estuaries and the need to protect and restore estuaries: Now, therefore, be it

Resolved, That the Senate—

(1) designates September 25, 2010, as ''National Estuaries Day'';

(2) supports the goals and ideals of National Estuaries Day;

(3) acknowledges the importance of estuaries to the economic well-being and productivity of the United States;

(4) recognizes that persistent threats undermine the health of the estuaries of the United States;

(5) applauds the work of national and community organizations and public partners that promote public awareness, understanding, protection, and restoration of estuaries;

(6) reaffirms the support of the Senate for estuaries, including the scientific study, preservation, protection, and restoration of estuaries; and

(7) expresses the intent of the Senate to continue working to understand, protect, and restore the estuaries of the United States.

NATIONAL CELIAC DISEASE AWARENESS DAY

Mr. WHITEHOUSE. I ask unanimous consent that the Senate proceed to the immediate consideration of S. Res. 605 submitted earlier today.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The legislative clerk read as follows:

A resolution (S. Res. 605) designating September 13, 2010, as ''National Celiac Disease Awareness Day.''

There being no objection, the Senate proceeded to consider the resolution.

Mr. WHITEHOUSE. I ask unanimous consent that the resolution be agreed to, the preamble be agreed to, the motions to reconsider be laid upon the table, with no intervening action or debate, and any statements related to the resolution be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The resolution (S. Res. 605) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 605

Whereas celiac disease affects approximately 1 in every 130 people in the United States, for a total of 3,000,000 people;

Whereas the majority of people with celiac disease have yet to be diagnosed;

Whereas celiac disease is a chronic inflammatory disorder that is classified as both an autoimmune condition and a genetic condition;

Whereas celiac disease causes damage to the lining of the small intestine, which results in overall malnutrition;

Whereas when a person with celiac disease consumes foods that contain certain protein fractions, that person suffers a cell-mediated immune response that damages the villi of the small intestine, interfering with the absorption of nutrients in food and the effectiveness of medications;

Whereas such problematic protein fractions are found in wheat, barley, rye, and oats, which are used to produce many foods, medications, and vitamins;

Whereas because celiac disease is a genetic disease, there is an increased incidence of celiac disease in families with a known history of celiac disease;

Whereas celiac disease is underdiagnosed because the symptoms can be attributed to other conditions and are easily overlooked by doctors and patients;

Whereas as recently as 2000, the average person with celiacdisease waited 11 years for a correct diagnosis;

Whereas 1/2 of all people with celiac disease do not show symptoms of the disease;

Whereas celiac disease is diagnosed by tests that measure the blood for abnormally high levels of the antibodies of immunoglobulin A, anti-tissue transglutaminase, and IgA anti-endomysium antibodies;

Whereas celiac disease can be treated only by implementing a diet free of wheat, barley, rye, and oats, often called a ''gluten-free diet'';

Whereas a delay in the diagnosis of celiac disease can result in damage to the small intestine, which leads to an increased risk for malnutrition, anemia, lymphoma, adenocarcinoma, osteoporosis, miscarriage, congenital malformation, short stature, and disorders of skin and other organs;

Whereas celiac disease is linked to many autoimmune disorders, including thyroid disease, systemic lupus erythematosus, type 1 diabetes, liver disease, collagen vascular disease, rheumatoid arthritis, and Sjogren's syndrome;

Whereas the connection between celiac disease and diet was first established by Dr. Samuel Gee, who wrote, ''if the patient can be cured at all, it must be by means of diet'';

Whereas Dr. Samuel Gee was born on September 13, 1839; and

Whereas the Senate is an institution that can raise awareness in the general public and the medical community of celiac disease: Now, therefore, be it

Resolved, That the Senate—

(1) designates September 13, 2010, as ''National Celiac Disease Awareness Day'';

(2) recognizes that all people of the United States should become more informed and aware of celiac disease;

(3) calls upon the people of the United States to observe National Celiac Disease Awareness Day with appropriate ceremonies and activities; and

(4) respectfully requests the Secretary of the Senate to transmit a copy of this resolution to the Celiac Sprue Association, the American Celiac Society, and the Celiac Disease Foundation.

MEASURE READ THE FIRST TIME—H.R. 3534

Mr. WHITEHOUSE. I understand that H.R. 3534 has been received from the House and is at the desk.

The PRESIDING OFFICER. The clerk will report the bill by title.

The assistant legislative clerk read as follows:

A bill (H.R. 3534) to provide greater efficiencies, transparency, returns, and accountability in the administration of Federal mineral and energy resources by consolidating administration of various Federal energy minerals management and leasing programs into one entity to be known as the Office of Federal Energy and Minerals Leasing of the Department of the Interior, and for other purposes.

Mr. WHITEHOUSE. I ask now for its second reading, and I object to my own request.

The PRESIDING OFFICER. Objection is heard. The bill will be read for the second time on the next legislative day.

ORDERS FOR WEDNESDAY, AUGUST 4, 2010

Mr. WHITEHOUSE. Mr. President, I ask unanimous consent that when the Senate completes its business today, it adjourn until 9:30 a.m. on Wednesday, August 4; that following the prayer and pledge, the Journal of proceedings be approved to date, the morning hour be deemed expired, the time for the two leaders be reserved for their use later in the day; that following any leader remarks, the Senate resume consideration of the House message to accompany H.R. 1586, as provided under the previous order.

The PRESIDING OFFICER. Without objection, it is so ordered.

PROGRAM

Mr. WHITEHOUSE. Tomorrow, there will be 1 hour for debate prior to a cloture vote on the motion to concur with an amendment with respect to H.R. 1586. The amendment to the motion relates to FMAP and teacher funding. Senators should expect the vote to occur around 10:40 a.m.

ORDER FOR ADJOURNMENT

Mr. WHITEHOUSE. Finally, I ask unanimous consent that following the remarks of Senators GRASSLEY and LEMIEUX, the Senate adjourn under the previous order. I thank the distinguished Senator from Iowa for his courtesy in allowing us to go through the closing script in this fashion.

The PRESIDING OFFICER. Without objection, it is so ordered.

EXECUTIVE SESSION

NOMINATION OF ELENA KAGAN TO BE AN ASSOCIATE JUSTICE OF THE SUPREME COURT OF THE UNITED STATES—Continued

The PRESIDING OFFICER. Under the previous order, the Senate will resume executive session to hear the Kagan nomination.

The Senator from Iowa.

Mr. GRASSLEY. I thank the Senator from Rhode Island. He is always very courteous to me.

Mr. President, I rise to take a few minutes to discuss the reasons why I am voting against Elena Kagan to be Associate Justice. An appointment to the Supreme Court is one of the most important positions an individual can hold under our Constitution. It is a lifetime position on the highest Court of the land. I take very seriously my constitutional role of advice and consent. The Senate's job is not only to provide advice and consent by confirming nominees who are intelligent and accomplished. Our job is to confirm nominees who will be fair and impartial judges, individuals who truly understand the proper role of a Justice in our system of government. Our job, then, is to confirm nominees who will faithfully interpret the law and the Constitution without personal bias or prejudice.

When the Senate makes its determination, we must carefully assess the nominee's legal experiences, record of impartiality, and commitment to the Constitution and rule of law. We need to assess whether the nominee will be able to exercise what we call judicial restraint. We have to determine if the nominee can resist the siren call to overstep his or her bounds and encroach upon the duties of the legislative and executive branches. Fundamental to the U.S. Constitution are the concepts of these checks and balances and the principle of separation of powers. The preservation of our individual freedoms actually depends on restricting the role of policymaking to legislatures rather than allowing unelected judges with lifetime appointments to craft law and social policy from the judicial bench. The Constitution constrains the judiciary as much as it constrains the legislative branch and the executive branch under the President.

When President Obama spoke about the criteria by which he would select his judicial nominees, he placed a very high premium on a judge's ability to have, in his words, ''empathy when deciding the hard cases.'' This empathy standard glorifies the use of a judge's heart and broader vision of what America should be in the judicial process. He said that individuals he would nominate to the Federal judiciary would have ''a keen understanding of how the law affects the daily lives of American people.'' So when President Obama nominated Elena Kagan to the Supreme Court, we have to assume he believed she met his ''empathy'' standard.

This empathy standard is a radical departure from our American tradition of blind, impartial justice. That is because empathy necessarily connotes a standard of partiality. A judge's impartiality is absolutely critical to his or her duty as an officer of an independent judiciary, so much so that it is actually mentioned three times in the oath of office that judges take.

Empathetic judges who choose to embrace their personal biases cannot uphold their sworn oath under our Constitution. Rather, judges must reject that standard and decide cases before them as the Constitution and the law requires, even if it compels a result that is at odds with their own political or ideological beliefs.

Justice is not an automatic or a mechanical process. Yet it should not be a process that permits inconsistent outcomes determined by a judge's personal predilections rather than from the Constitution and the law. An empathy standard set by the President that encourages a judge to pick winners and losers based on that judge's personal or political beliefs is contrary to the American tradition of justice.

That is why we should be very cautious in deferring to President Obama's choices for the judicial branch. He set that standard; we did not. We should carefully evaluate these nominees' ability to be faithful to the Constitution. Nominees should not pledge allegiance to the goals of a particular political party or outside interest groups that hope to implement their political and social agendas from the bench rather than getting it done through the legislative branch.

When she was nominated to the Supreme Court, meaning Ms. Elena Kagan, Vice President BIDEN's Chief of Staff, Ron Klain, assured the leftwing groups that they had nothing to worry about in Elena Kagan because she is, in his words, ''clearly a legal progressive.'' So it is pretty safe to say that President Obama was true to his promise to pick an individual who likely would rule in accordance with these groups' wishes. A Justice should not be a member of someone's team working to achieve a preferred policy result on the Supreme Court. The only team a Justice of the Supreme Court should be on is the team of the Constitution and the law.

I have said on prior occasions that I do not believe judicial experience is an absolute prerequisite for serving as a judge. There have been dozens of people, maybe close to 40, who have been appointed to the Supreme Court who have not had that experience. Solicitor General Kagan, however, has no judicial experience and has very limited experience as a practicing attorney.

Unlike with a judge or even a practicing lawyer, we do not have any concrete examples of her judicial method in action. Thus, the Senate's job of advice and consent is much more difficult. We do not have any clear substantive evidence to demonstrate Solicitor General Kagan's ability to transition from a legal academic and political operative to a fair and impartial jurist.

Solicitor General Kagan's record and her Judiciary Committee testimony failed to persuade me that she would be capable of making this crucial transformation. Her experience has primarily been in politics and academia. As has been pointed out, working in politics does not disqualify an individual from being a Justice. However, what does disqualify an individual is an inability to put politics aside in order to rule based upon the Constitution and the law. In my opinion, General Kagan did not demonstrate that she could do that during her committee testimony. Moreover, throughout her hearings, she refused to provide us with details on her views on constitutional issues.

It was very unfortunate we were unable to elicit forthcoming answers to many of our questions in an attempt to assess her ability to wear the judicial robe. She was not forthright in discussing her views on basic principles of constitutional law, her opinions of important Supreme Court cases or personal beliefs on a number of legal issues. This was extremely disappointing.

Candid answers to our questions were essential for us as Senators to be able to ascertain whether she possesses the proper judicial philosophy for the Supreme Court. In fact, her unwillingness to directly answer questions about her judicial philosophy indicated a political approach throughout the hearing. I was left with no evidence that General Kagan would not advance her own political ideas if she is confirmed to the Federal bench.

General Kagan's refusal to engage in meaningful discussion with us was particularly disappointing because of her position in a 1995 Law Review Article entitled ''Confirmation Messes, Old and New.'' In that article she wrote—and she was then Chicago Law Professor Kagan—that it was imperative that the Senate ask about, and the Supreme Court nominees discuss, their judicial philosophy and substantive views on issues of constitutional law. Specifically, then-Professor Kagan wrote:

> When the Senate ceases to engage nominees in meaningful discussion of legal issues, the confirmation process takes on an air of vacuity and farce, and the Senate becomes incapable of either properly evaluating nominees or appropriately educating the public.

That is in Professor Kagan's own words.

Bottom line, General Kagan did not live up to her own standard. She was nonresponsive to many of our questions. She backed away from prior positions and statements. She refused to discuss the judicial philosophy of sitting judges.

When asked about her opinions on constitutional issues or Supreme Court